

REMARKS

Claims 42 and 46 have been cancelled because they are duplicates of claims 1 and 6 respectively. Claims 1, 2, and 6 are presented without amendment for reconsideration in the light of the following remarks and authorities. New claims 47-49 are dependent upon and include all the limitations of claim 1 and particularly point out and distinctly claim features of the invention. Such cancellations are only for the purpose of expediting the prosecution of this application and are not to be construed as an abandonment of any of the novel concepts disclosed therein.

Claims 1, 6, 42 and 46 are rejected under 35 U.S.C. 102(e) as being anticipated by Thigpen US 7343020 82).

With respect to claim 1, Thigpen discloses an audio system including a plurality of channels intended to be radiated in a predetermined positional relationship to a listener (col. 1 In.60-63), comprising: a listening area (fig.1 #10) comprising a plurality of listening spaces (fig.1 #22,24); a first directional local audio device (fig.1 #40, "driver side set of speakers") comprising at least two radiating elements (fig.1 #40 "left and right speakers around driver") radiating sound waves that destructively interfere more in some directions than the sound waves destructively interfere in other directions (col.7 In 4-12), the directional audio device being positioned in a first of said listening spaces, close to a head of the listener for radiating first sound waves corresponding to a first of said channels (col. 3 In.31-39); and a second nonlocal audio device (fig 4 #142), positioned inside said listening area and outside said listening spaces, distant from said first of said listening spaces, for radiating sound waves corresponding to said first of said channels (col. 6 In.14-16). It is implied that destructive interference resultant from two separate sound sources (#40) would not be equal at all points in space, therefore the sound waves would destructively interfere more in some directions when compared to others. Thigpen discloses wherein the speakers #40 may be ultrasonic transducers. It is implied that ultrasonic transducers function through destructive interference at the head of a listener. It is also well known that the non-local audio device #142 of Thigpen would propagate the low frequency band of a combination of both right and left channels.

With respect to claim 6, Thigpen discloses an audio system in accordance with claim 1, wherein said listening area comprises a vehicle passenger compartment and said listening locations comprise seating locations within said vehicle passenger compartment (fig.1).

With respect to claim 42, Thigpen discloses an audio system including a plurality of channels intended to be radiated in a predetermined positional relationship to a listener (col. 1 In.60-63), comprising: a listening area (fig.1 #10) comprising a plurality of listening spaces (fig.1 #22,24); a first local directional

audio device (fig.1 #40, "driver side set of speakers") comprising at least two radiating elements (fig.1 #40 "left and right speakers around driver") radiating sound waves that destructively interfere more in some directions than the sound waves destructively interfere in other directions (col.7 InA-12), the directional audio device at a fixed location in a first of said listening spaces, close to a head of the listener for radiating first sound waves corresponding to a first of said channels (col.3 In.31-39); and a second nonlocal audio device (fig 4 #142), positioned inside said listening area and outside said first of said listening spaces, distant from said first of said listening spaces, for radiating sound waves corresponding to said first of said channels (col.6 In.14-16). It is implied that destructive interference resultant from two separate sound sources (#40) would not be equal at all points in space, therefore the sound waves would destructively interfere more in some directions when compared to others. Thigpen discloses wherein the speakers #40 may be ultrasonic transducers. It is implied that ultrasonic transducers function through destructive interference at the head of a listener. It is also well known that the non-local audio device #142 of Thigpen would propagate the low frequency band of a combination of both right and left channels.

With respect to claim 46, Thigpen discloses an audio system in accordance with claim 42, wherein said listening area comprises a vehicle passenger compartment and said listening locations comprise seating locations within said vehicle passenger compartment (fig.1).

Pp. 2-4.

This ground of rejection is respectfully traversed.

"It is well settled that anticipation under 35 U.S.C. 102 requires the presence in a single reference of all of the elements of a claimed invention." *Ex parte Chopra*, 229 U.S.P.Q. 230, 231 (BPA&I 1985) and cases cited.

"Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim." *Connell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193, 198 (Fed. Cir. 1983).

"This court has repeatedly stated that the defense of lack of novelty (i.e., 'anticipation') can only be established by a single prior art reference which discloses each and every element of the claimed invention." *Structural Rubber Prod. Co. v. Park Rubber Co.*, 223 U.S.P.Q. 1264, 1270 (Fed. Cir. 1984), citing five prior Federal Circuit decisions since 1983 including *Connell*.

In a later analogous case the Court of Appeals for the Federal Circuit again applied this rule in reversing a denial of a motion for judgment n.o.v. after a jury finding that claims were anticipated. *Jamesbury Corp. v. Litton Industrial Prod., Inc.*, 225 U.S.P.Q. 253 (Fed. Cir. 1985).

After quoting from *Connell*, "Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim," 225 U.S.P.Q. at 256, the court observed that the patentee accomplished a constant tight contact in a ball valve by a lip on the seal or ring which interferes with the placement of the ball. The lip protruded into the area where the ball will be placed and was thus deflected after the ball was assembled into the valve. Because of this constant pressure, the patented valve was described as providing a particularly good seal when regulating a low pressure stream. The court quoted with approval from a 1967 Court of Claims decision adopting the opinion of then Commissioner and later Judge Donald E. Lane:

[T]he term "engaging the ball" recited in claims 7 and 8 means that the lip contacts the ball with sufficient force to provide a fluid tight seal. *** The Saunders flange or lip only sealingly engages the ball 1 on the upstream side when the fluid pressure forces the lip against the ball and never sealingly engages the ball on the downstream side because there is no fluid pressure there to force the lip against the ball. The Saunders sealing ring provides a compression type of seal which depends upon the ball pressing into the material of the ring. *** The seal of Saunders depends primarily on the contact between the ball and the body of the sealing ring, and the flange or lip sealingly contacts the ball on the upstream side when the fluid pressure increases. 225 U.S.P.Q. at 258.

Relying on *Jamesbury*, the ITC said, "Anticipation requires looking at a reference, and comparing the disclosure of the reference with the claims of the patent in suit. A claimed device is anticipated if a single prior art reference discloses all the elements of the claimed invention as arranged in the claim." *In re Certain Floppy Disk Drives and Components Thereof*, 227 U.S.P.Q. 982, 985 (U.S. ITC 1985).

Claim 1 calls for a first directional device that "comprises at least two radiating elements", that it is positioned "at a fixed location in a first of said listening spaces close to the head of a listener", and that the directional device is "for radiating first sound waves corresponding to a first of said channels."

The two radiating elements the Examiner identifies do not meet the limitations of the claim. The claim calls for the first directional device to be comprised of at least two radiating elements. The Examiner identifies #40 in Fig. 1 "left and right speakers around driver" of the reference. The reference refers to each element 40 alone as a directional transducer. The directional transducers in the reference are made up of only a single radiating element. The separate elements 40 used for left and right signal reproduction are each directional speakers in their own right. The reference does not disclose them forming a single directional device comprised of at least two radiating elements as called for by claim 1.

The Examiner also identifies column 3, lines 31-39 for support for the directional device being positioned "close to the head of a listener." There is no such language present in this section, nor any other section of the reference. The reference does not disclose a directional device positioned "close to the head of a listener," as recited in claim 1. "A reference is only good for what it clearly and definitely discloses." *In re Hughes*, 145 U.S.P.Q. 467, 471 (C.C.P.A. 1965); *In re Moreton*, 129 U.S.P.Q. 227, 230 (C.C.P.A. 1961).

Claim 1 also calls for the directional device which comprises at least two transducers being for "radiating first sound waves corresponding to said first of said channels." That is, the claim calls for two radiating elements that radiate the information from a first channel and that their radiation interferes destructively. The two elements 40 of the reference each receive two different channel signals (left and right signals), not the same signal.

In view of the foregoing cancellations, remarks and the inability of the prior art, alone or in combination, to anticipate, suggest or make obvious the subject matter as a whole of the invention disclosed and claimed in this application, all the claims are submitted to be in a condition for allowance, and notice thereof is respectfully requested. Should the Examiner believe the application is not in a condition for allowance, he is respectfully requested to telephone the undersigned attorney at 617-521-7014 to discuss what additional steps he believes are necessary to place the application in a condition for allowance.

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Page : 8 of 8

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Respectfully submitted,
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